

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 986 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

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STATE OF GUJ

Versus

HATHISING FATESINH RAJPUT

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Appearance:

Mr. M.A. Bukhari, Public Prosecutor for appellant.

Mr. N.D. Gohil, Advocate, for the respondents.

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 26/06/96

ORAL JUDGEMENT

The State has preferred this appeal u/s 378 of the Criminal Procedure Code against the judgment and order dated 31-7-1990 passed by the learned Metropolitan Magistrate, Court No.16, Ahmedabad, acquitting the respondents - accused persons.

2. The respondents were charged for the offence committed under Sections 325-504 read with section 114 of the I.P. Code. It was alleged that at about 1-00 p.m. on November 2, 1987 the accused no.1 gave fist blows on nose of the p.w. no.1 Ganpatbhai Arjanbhai causing fracture. The complainant p.w. no.1 Ganpatbhai and accused persons were residing in the same society. It was alleged that there was enmity between them on account of quarrels between the children. The accused no.2 is alleged to have caused kick blows to p.w. no.1 Ganpatbhai. Both the accused are alleged to have voluntarily caused grievous hurt to the p.w. no.1 Ganpatbhai.

3. Charge Exh.2 based on the aforesaid allegations was read over to the accused persons and they pleaded not guilty. The learned Metropolitan Magistrate has recorded the evidence and considering the evidence and other material on record ordered to acquit both the accused persons as aforesaid.

4. Mr. M.A. Bukhari, learned A.P.P. appearing for the appellant - State has taken me to the relevant evidence on record and submitted that the learned Magistrate has committed error in acquitting the accused persons as there is clear cut evidence of injury on the person of the complainant. Considering the evidence on record I am not impressed by the submission, for the p.w. no.2 Dahyabhai Bhulabhai has not supported the prosecution case. He was declared hostile. P.W. No.3 Maheshbhai Hiralal has deposed at Exh.8 that he was passing through the road when the incident took place and he has not identified any accused persons.

5. The prosecution has examined p.w. no.4 Dr. Dharmila Himmat Shah at Exh.10. She has deposed that Dr. Hiren M. Jani has examined p.w. no.1 at 1-00 p.m. on November 2, 1987. Dr. Jani was there in the hospital. She produced the medical certificate from the record at Exh.11. He submitted in the cross-examination that he had no personal knowledge about the injuries caused on the person of the p.w. no.1. She did not examine the p.w. no.1. Medical Certificate Exh.11 appears to have been issued by Dr. D.G. Shah. Dr. D.G. Shah is not examined by the prosecution. Dr. Hiren M. Jani said to

have examined the p.w. no.1 could have been summoned from the L.G. Hospital. However, no attempt appears to have been made to summon him. Dr. D.G. Shah who issued the medical certificate Exh.11 is also not examined. Thus, the injuries on the person of p.w. no.1 are not proved by the medical evidence. The prosecution has not bothered to produce X-ray plat to show fracture on the person of the p.w. no.1. The complainant has deposed about the incident. The learned Metropolitan has rightly disbelieved that the incident took place on account of previous enmity.

6. Having regard to the facts and circumstances of the case, the prosecution cannot be said to have established his case beyond reasonable doubt. The learned Metropolitan Magistrate has rightly recorded the order of acquittal. There is no substance in the appeal.

7. In the result, the appeal fails and is dismissed.

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